Legal Matters®

Elder Law
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Is it better to use joint ownership or a trust to pass down a home?

When leaving a home to your children, it is possible to avoid probate by using either joint ownership or a revocable trust, but which is the better method?

If you add your child as a joint tenant on your house, you will both have an equal ownership interest in the property. If one joint tenant dies, his or her interest immediately ceases to exist and the other joint tenant owns the entire property. This has the advantage of avoiding probate.

A disadvantage of joint tenancy is that creditors can attach the tenant's property to satisfy a debt. For example, if a co-tenant defaults on debts, his or her creditors can sue in a "partition proceeding" to have the property interests divided and the property sold, even over the other owner's objections.

In addition, even in the absence of an issue with a creditor, one co-owner of the property can sue to partition the property, so one owner can force another owner to move out.

Joint tenancy has a capital gains impact for a child. When you give property to a child, the tax basis for the property is the same as the price you paid to purchase the property. However, inherited property receives a "step up" in basis, which means the basis for calculating gain is the current value of the property. When you die, your child

Continued on page 2

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How gifts can affect Medicaid eligibility

We've all heard that it's better to give than to receive, but if you think you might someday want to apply for Medicaid long-term care benefits, you need to be careful, because giving away money or property can interfere with your eligibility.

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If you transfer certain assets within five years before applying for Medicaid, you will be ineligible for a period of time under federal Medicaid law, depending on how much money you transferred. This is known as a transfer penalty. Even small transfers can affect eligibility. While federal law allows individuals to gift up to $15,000 a year without having to pay a gift tax, Medicaid law still treats that gift as a transfer.

Any transfer that you make, however innocent, will come under scrutiny. For example, Medicaid does not have an exception for gifts to charities, so if you give money to a charity, it could affect your Medicaid eligibility down the road. Similarly, gifts for holidays, weddings, birthdays and graduations can cause a transfer penalty. If you buy something for a friend or relative, it also could result in a transfer penalty.

Spending a lot of cash all at once or over time could prompt the state to request documentation showing how the money was spent. If you don't have documentation showing that you received fair market value in return for a transferred asset, you could be subject to a transfer penalty.

While most transfers are penalized, certain transfers are exempt. Even after you enter a nursing home, you may make certain assets transfers without having to wait out a period of Medicaid ineligibility. Those transfers can be to:

- a spouse;
- a trust for the sole benefit of a child who is blind or permanently disabled;
- a trust for the sole benefit of anyone under age 65 who is permanently disabled.

Special exceptions apply to the transfer of a home. A Medicaid applicant's home may be transferred to those listed above, and the applicant may freely transfer his or her home without incurring a transfer penalty to the following individuals:

- a child under age 21;
- a child who is blind or disabled (the house does not have to be in a trust);
- a sibling who has lived in the home during the year preceding the applicant's institutionalization, and who already holds an equity interest in the home;
- a "caretaker child," meaning a child of the applicant who lived in the house for at least two years prior to the applicant's institutionalization and who during that period provided care that allowed the applicant to avoid a nursing home stay.

Before giving away assets or property, check with your attorney to ensure that it won't affect your Medicaid eligibility.

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Continued from page 1

inherits your half of the property, so half of the property will receive a "step up" in basis. But the tax basis of the gifted half of the property will remain the original purchase price.

If your child sells the house after you die, he or she would have to pay capital gains taxes on the difference between the original purchase price and the selling price. The only way to avoid the tax is for the child to live in the house for at least two years before selling it. In that case, the child can exclude up to $250,000 ($500,000 for a couple) of capital gains from taxes.

If, alternatively, you put your property in a revocable trust with yourself as beneficiary, and your child as beneficiary after you die, the property will similarly go to your child without going through probate.

A trust is also beneficial because it can guarantee you the right to live in the house, and it takes into account changes in circumstances, such as a child passing away.

Another benefit of a trust relates to capital gains taxes. The tax basis of property in a revocable trust is stepped up when you die, which means the basis would be the current value of the property. Therefore, if your child sells the property soon after inheriting it, the value of the property would likely not have changed much and the capital gains taxes would be low.

In general, a trust is more flexible and provides more options to protect you and your child, but circumstances always vary. You should talk to your attorney about how to pass down your property.

Raising grandchildren? EITC may be an option

Working grandparents who support their grandchildren may qualify for the earned income tax credit, which could reduce the amount they pay in taxes by thousands of dollars, or allow them to receive a refund.

The earned income tax credit is a benefit for working people with low to moderate incomes who have dependents, a category that includes grandparents. (Taxpayers without a dependent may also qualify, but it is more difficult.) To be able to claim the credit, you must be raising a child who:

• is your son, daughter, adopted child, stepchild, foster child, brother, sister, half-brother, half-sister, step-sister or a descendent of any of them, such as a grandchild or niece or nephew;

• is younger than 19 at the end of the year, younger than 24 and a full-time student at the end of the year, or any age and permanently and totally disabled;

• lives with you for more than half the year.

To qualify for the credit your income must be below certain limits, depending on how many dependents you have.

The limits for 2019 are as follows:

• With one child: filing as an individual, your income must be less than $41,094. Filing jointly, your income must be less than $46,884.

• With two children: filing as an individual, your income must be less than $46,703. Filing jointly, your income must be less than $52,493.

• With three or more children: filing as an individual, your income must be less than $50,162. Filing jointly, your income must be less than $55,952.

The maximum amount of the credit depends on how many dependents you have.

In 2019, the maximum credit amount is as follows:

• $6,557 with three or more qualifying children

• $5,828 with two qualifying children

• $3,526 with one qualifying child

For more IRS information about the tax credit, visit https://www.irs.gov/newsroom/grandparents-caring-for-grandchildren-should-check-their-eligibility-for-eitc

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Most are taking Social Security at the wrong time

A recent report found that almost no retirees are making financially optimal decisions about when to take Social Security and are losing out on more than $100,000 per household as a result. The average Social Security recipient would receive 9 percent more income in retirement if he or she made a financially optimal decision.

When claiming Social Security, you have three options: you may begin taking benefits between age 62 and your full retirement age, you can wait until your full retirement age, or you can delay benefits and take them anytime up until you reach age 70.

If you take Social Security between age 62 and your full retirement age, your benefits will be reduced to account for the longer period you will be paid. If you delay taking retirement, depending on when you were born, your eventual benefit will increase by 6 to 8 percent for every year that you delay, in addition to any cost-of-living increases.

The report, conducted by online investment management and financial planning firm United Income, found that only 4 percent of retirees make financially optimal decisions on when to claim Social Security. Nearly all of the retirees who were not optimizing their benefits were claiming benefits too early.

The study found that 57 percent of retirees would build more wealth if they waited to claim until age 70. More than 70 percent of retirees, however, claim benefits before their full retirement age. Claiming before full retirement is the best financial option for only 6.5 percent of retirees, according to United Income.

The consequences of claiming Social Security too early can be huge. The report found that collecting benefits at the wrong time causes retirees to lose collectively $3.4 trillion in potential income (an average of $111,000 per household). The report also estimates that elderly poverty could be cut in half if retirees claimed benefits at the financially optimal time. People may not be aware that collecting benefits before full retirement age means benefits will be permanently reduced.

According to the report's authors, policy changes are needed to get retirees to wait to claim benefits. The report recommends that early claims become the exception, reserved for those with a demonstrable need to collect early. It also recommends changing the label "early retirement" to "minimum benefit age."

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Medicare launches app to help determine coverage

Do you need to know if a procedure is covered by Medicare? There's an app for that. Medicare has launched a free app, called "What's Covered," that gives beneficiaries a quick way of determining if the program covers a medical item or service.


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The app offers information on what is covered under Medicare Parts A and B and provides details on basic costs. It includes a list of covered preventive services. It does not, however, provide information on extra benefits that Medicare Advantage plans may offer that Original Medicare does not, such as certain vision, hearing or dental benefits.

Among questions the app can answer:

- When are mammograms covered?
- Will Medicare help with home health care costs?
- Will Medicare pay for diabetes supplies?
- Can I get a regular cervical cancer screening?
- Will my Medicare benefits cover a service to help me stop smoking?

The app doesn't offer personalized information. It doesn't ask details about each user's specific insurance coverage, so it doesn't take into account a user's supplemental insurance, co-insurance and deductibles. It provides another way for Medicare beneficiaries to get the same information that is available online and in the "Medicare & You" handbook, as part of an initiative by the Centers for Medicare and Medicaid Services to modernize Medicare and empower beneficiaries.

To get the "What's Covered" app, go here to https://www.medicare.gov/blog/whats-covered-mobile-app.